

Kelso City Council Agenda

Regular Meeting, 7:00 pm
December 7, 2010
City Hall, Council Chambers
203 S. Pacific
Kelso, WA 98626



****Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900****

Invocation:

Pastor John Jorgenson-Kelso-Three Rivers Bible Church

Call to Order:

Roll Call to Council Members:

Approve Minutes:

November 16, 2010-Regular Council Meeting

KSD Student Representative:

Eric McDaniel-ASB President

Public Hearing:

Continuation of Budget Hearing 2011-2012

Consent Items:

1. Close Out
 - o Terry's Salvage-1124 N. Pacific
 - o Single Residence-1504 N. 2nd
2. Lease Assignment to Dutch Brothers
3. Catlin Hall-Kelso Senior Center Agreement
4. Water Wheeling Agreement-Beacon Hill Water & Sewer District
5. Appointment
 - o Park Board Recommendation-Dan Jones

Citizen Business:

Council Business:

1. Council Rules Review

Action/Motion Items:

1. Ordinance, 2nd Reading
Budget Revision #3 for 2010 Fiscal Year

Kelso City Council Agenda

Regular Meeting, 7:00 pm
December 7, 2010
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203 S. Pacific
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Action/Motion Items Continued:

2. Ordinance, 2nd Reading
Increase Business License Fees
3. Ordinance, 1st Reading
Setting 2011 Property Tax Levy Amount
4. Ordinance, 1st Reading
Final Budget Reading
5. Ordinance, 1st Reading
Amending Ordinance #10-3731 Regarding Latecomer Agreement
6. Resolution
Assignment and Transfer to BHSD of Water Wheeling Agreement and
Interlocal Agreement for Interim Water Purchase.

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Father Mel Straz, Immaculate Heart of Mary Catholic Church, gave the invocation. Mayor David Futchter led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futchter. Councilmembers in attendance were: Futchter, Karnofski, Schimmel, Myers, McDaniel, Roberson, and Webb.

Minutes: Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, 'Approve the Minutes of the 11/2/10 Regular Meeting and the 11/4/10 Special Budget Meeting,' motion carried, all voting yes.

PUBLIC HEARING – Adopt a Revised Six-Year Transportation Improvement Program 2011-2016:

Mayor Futchter opened the public hearing at 7:01 p.m. Public Works Director David Sypher spoke about the update that is needed to facilitate the on-going progress of the West Main Re-alignment Project and to initiate work on the South Kelso Railroad Crossing Study. Mayor Futchter invited citizens to make comments. There were no comments from the public. Mayor Futchter closed the public hearing at 7:02 p.m.

PROCLAMATION:

Mayor Futchter read a proclamation declaring the week of November 15 through November 19, 2010, as "International Education Week" in the City of Kelso. Foreign Exchange Students Annika from Germany and Daphne from Holland accepted the proclamation and spoke briefly about their host families. Annika attends R A Long and Daphne attends Kelso High School.

CONSENT AGENDA:

1. **Memorandum of Understanding – Cowlitz 2 Fire & Rescue**
2. **WSDOT Traffic Signal General Maintenance Agreement**
3. **Appointment of Municipal Court Judges**
4. **Interlocal Agreement – Street Waste Beneficial Reuse Facility**
5. **Auditing of Accounts: \$1,468,955.66**
6. **Liquor License Renewals** – Plaza Jalisco, 400 W. Main; Quick Stop Market, 807 S. Pacific

Finance Director/City Clerk Brian Butterfield asked to have Item No. 1 (MOU with Cowlitz 2 Fire & Rescue) pulled from the Consent Agenda to be discussed separately.

Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Approve the Consent Agenda, with the removal of Item No. 1, and the auditing of accounts in the amount of \$1,468.955.66,' motion carried, all voting yes.

Memorandum of Understanding – Cowlitz 2 Fire & Rescue: Due to the current economic conditions, the City and Cowlitz 2 agreed that the current annual fee of \$300,000 for fire and emergency medical services will be temporarily reduced to \$240,000 for the 2011 budget year. Finance Director/City Clerk Butterfield spoke about the MOU contradicting the budget as it sits now, because we are assuming that the \$60,000 decrease we pay Cowlitz 2 will go through 2012. If the 2012 budget is passed, we will be out \$60,000. **Upon motion by Councilmember Roberson, seconded by Councilmember Webb, 'Authorize the City Manager to sign the Memorandum of Understanding with Cowlitz 2 Fire & Rescue.'** Lengthy discussion followed. Councilmembers Karnofski, Roberson, Myers, Webb, Schimmel, and Futchter voted yes. Councilmember McDaniel voted no. Motion passed 6 to 1.

MOTION ITEMS:

Resolution No. 10-1029 – Cancelling Unclaimed Warrants: The Deputy City Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Schimmel, 'Pass Resolution No. 10-1029, 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO CANCELLING CERTAIN WARRANTS OF THE CITY PURSUANT TO RCW 39.56.040,' motion carried, all voting yes.

Resolution No. 10-1030 – Authorizing an Increase in the Regular Property Tax Levy: The Deputy City Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Pass Resolution No. 10-1030, 'A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO AUTHORIZING AN INCREASE IN THE REGULAR PROPERTY TAX LEVY IN ADDITION TO ANY AMOUNT RESULTING FROM NEW CONSTRUCTION AND IMPROVEMENTS TO PROPERTY, NEWLY CONSTRUCTED WIND TURBINES, AND ANY INCREASE IN THE VALUE OF STATE ASSESSED UTILITY PROPERTY.' Discussion followed. Councilmembers Karnofski, Roberson, Myers, McDaniel, Webb, and Futchter voted yes. Councilmember Schimmel voted no. Motion passed 6 to 1.

Resolution No. 10-1031 – Setting the 2011 Property Tax Levy Amount: The Deputy City Clerk read the proposed resolution by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Pass Resolution No. 10-1031, 'A RESOLUTION OF THE CITY OF KELSO FIXING THE ESTIMATED AMOUNT TO BE RAISED BY AD VALOREM TAXES AT \$1,329,253 FOR THE 2011 BUDGET OF THE CITY.' Councilmembers Karnofski, Roberson, Myers, McDaniel, Webb, and Futchter voted yes. Councilmember Schimmel voted no. Motion passed 6 to 1.

Resolution No. 10-1032 – Adopt Revised Six-Year Transportation Improvement Program for 2011-2016: The Deputy City Clerk read the proposed resolution by title only. Upon motion by Councilmember Webb, seconded by Councilmember McDaniel,

'Pass Resolution No. 10-1032, 'A RESOLUTION OF THE CITY OF KELSO, WASHINGTON, ADOPTING A REVISED SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM FOR CONSTRUCTION OF STREET IMPROVEMENTS, AS MORE PARTICULARLY DESCRIBED HEREIN.' Discussion followed concerning the reason the Riverfront Park Pedestrian Access (Item 4) is so high on the TIP list. Public Works Director Sypher said the pedestrian access has to do with the third rail. Previously, \$300,000 was received for a pedestrian crossing; however, it was not feasible because there were no additional funds to complete the project. We have been allowed to transfer that money from the south end of Kelso and now we have the entire area, where the golf course is now, to develop. This will allow us to make the decisions as to where and how we want that crossing. Also discussed was the Kelso Drive Bridge Repair project (Item 3). The work was completed; however, it cannot be removed from the list until the Department of Revenue paperwork has been finalized. Yew Street was also discussed briefly. David said it is design ready; however, additional funding is needed to complete the project. A storm drain system is also needed, because there is no place for the water to go. Motion carried, all voting yes.

Ordinance (1st Reading) – Budget Revision #3 for 2010 Fiscal Year: The Deputy City Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Pass on 1st Reading, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING THE 2010 BUDGET TO REFLECT REVENUES AND APPROPRIATE FUNDS TO COVER EXPENDITURES OVER AND ABOVE THOSE ANTICIPATED AT THE TIME SAID BUDGET WAS ADOPTED.' Motion carried, all voting yes.

Ordinance (1st Reading) – Increase Business License Fees: The Deputy City Clerk read the proposed ordinance by title only. Upon motion by Councilmember Myers, seconded by Councilmember McDaniel, 'Pass on 1st Reading, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING ORDINANCE NOS. 3657 and 3558, CODIFIED AS KMC 5.02.060 REGARDING BUSINESS REGISTRATION/LICENSE FEES FOR ENGAGING IN ANY BUSINESS IN THE CITY OF KELSO.' Mayor Fitcher said this ordinance would increase the license fee from \$25 to \$50 a year. Discussion followed. Councilmembers Karnofski, Roberson, Myers, McDaniel, Webb, and Fitcher voted yes. Councilmember Schimmel voted no. Motion passed 6 to 1.

STAFF REPORTS:

Janean Parker: No report

David Sypher: 1) We are in the middle of union negotiations concerning some adjustments that need to be made to the budget. I am proud of our staff in the way they are trying to be part of the solution. 2) The crews are continuing to work on winterization, to get ready for the upcoming winter season. 3) We are working on

planning and preparation of the CIP, including the 2011 overlay. 4) We have applied for our CHAP Street Grants which will assist in some of our turn-back streets that we received from the Department of Transportation. 5) The Three Rivers Regional Wastewater Treatment Plant is going through their budget and union negotiations, and we are participating in those functions. We have been able to cut our annual assessment, a savings of about \$300,000, due to some of our sewer improvements. 6) Our Third Avenue project is complete and I think you will be pleased with the results. 7) Councilmember Myers reported the Three Rivers Wastewater recently had an audit and there were no findings.

Michael Kerins: Terry's Salvage Yard has been demolished and cleared. The site is a hazardous waste site, so the next step is to clean up the soil. A representative from a firm in Bellingham has looked at the site and will help us apply for a \$200,000 grant from the Department of Ecology, so that area can be cleaned up and redeveloped.

Cindy Donaldson: 1) We have been busy with school, daycare field trips, and story times 2) We are gearing up for the Tree Lighting event, "A Cowboy Christmas," which will be at the Kelso Depot on Friday, December 3rd, from 5:00 to 8:00.

Darr Kirk: We had our annual Police Department dinner. It was great to have a relaxing evening with our co-workers and spouses. All of our officers have done a great job, but the following officers were recognized for some special accomplishments: Detective Mark Berglund, worked on the Fibre robbery and a Foster Farms fraud investigation; Detective John Johnston, worked on some high profile cases; Officer Bebe McFall, coordinated the Shop With a Cop Program and the Citizens Academy; Officer Craig Christianson, coordinated for National Night Out; and Officer Darrell Stair served five years on the Cowlitz County SWAT Unit.

Brian Butterfield: No report

COUNCIL REPORTS:

John Karnofski: No report

Rick Roberson: 1) Tomorrow night we will have a Town Hall/Community Chat beginning at 6:00 p.m. at Wallace School. Citizens are urged to attend. 2) Reminded Councilmembers that the first topic on their list of Council goals was to work with the State Legislatures that represent Kelso.

Dan Myers: Dan welcomed the foreign exchange students who spoke earlier and shared that his daughter-in-law is from Germany.

Todd McDaniel: At the last Council Meeting I spoke about the transportation plan Cowlitz Transit Authority (CUBS) is working on. The plan will be discussed at a workshop tomorrow at 3:00 p.m. at Longview City Hall. Everyone is welcome.

James Webb: No report

Gary Schimmel: No report

David Futcher: No report

There being no further business, Mayor Futcher adjourned the meeting at 7:41 p.m.

MAYOR

CITY CLERK

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Close-out for demolition of Terry's Salvage at 1124 N. Pacific and the single family residence at 1504 N. 2nd.

Agenda Item: _____

Dept. of Origin: Community Development

For Agenda of: December 07, 2010

Originator: Michael Kerins, AICP

Cost of Item: \$69,271.80

PRESENTED BY:

Michael Kerins, AICP

City Manager: Dennis Richards

AGENDA ITEM ATTACHMENTS:

None

SUMMARY STATEMENT:

Council awarded the contract for demolition of Terry's Salvage at 1124 N. Pacific and the single family residence at 1504 N. 2nd to TruFarma, LLC of Vancouver, Washington, during the April 6th, council meeting in the amount of \$65,279.50, with an amendment to the original contract for an additional \$3,000 due to the removal of additional materials that were uncovered during demolition. Work Started in early October, 2010 and was completed on November 19, 2010.

The project included the demolition of a 6,800 square foot commercial structure and a 1,500 square foot single family residence that had been determined to constitute blight. The contract also included the clearing of both properties of all debris and vegetation.

FINANCIAL SUMMARY

Original Contract Amount	\$65,279.50
1 st Change Order	\$ 1,186.90
2 nd Change Order	\$ 3,021.20
Final Contract Amount	\$69,487.60
Retainage	\$ 3,220.00

RECOMMENDED ACTION:

Staff recommends Council make a motion to close out the above mentioned demolition project and authorize the release of retainage upon receipt of final approval from the State of Washington Department of Labor and Industries, Department of Revenue, and Employment Security Department.



DUTCH BROS. *Coffee*®

November 23, 2010

RECEIVED
CITY OF KELSO

NOV 29 2010

CITY MANAGER'S
OFFICE

Shelly Timm
City of Kelso
PO Box 819
Kelso, WA 98626

Re: Dutch Bros. lease assignment to Luna

Dear Shelly,

Pursuant to a call this morning, I understand that the city manager will be presenting the Lease, as amended by our addendum, to the city council for ratification.

Attached is also the assignment of the lease rights from us to Mark Luna, our franchisee who is moving to Kelso and drafting plans to renovate the building. Just yesterday we purchased the leasehold rights and equipment from Karen pursuant to our purchase agreement and in reliance of the lease changes and transfer from the city. We appreciate the need to go through the correct process and expect that everything will run smoothly.

The one issue that was identified for change before Council was the need to clarify the base rent as fixed but that the excise tax must adjust as that calculation is applied. I believe I have captured that change in the assignment but please let us know if I have missed it.

I am enclosing the full set of documents relating to the Lease, including the assignment from Karen and the proposed transfer from DB Franchising to Mr. Luna.

We are very excited about coming to Kelso and expect that after it is renovated, it will be a real gem for the city and for I-5 travelers. Mr. Luna can be reached at 541-230-0730 (cell); he is expecting to spend a good deal of time working through the city process of accounts, permits, so perhaps he can set that time to meet with you.

Please contact me with any questions.

Best regards,

Alan Harper

Cc: Mark Luna



DUTCH BROS. *Coffee*®

October 8, 2010

Shelly Timm
City of Kelso
PO Box 819
Kelso, WA 98626

RECEIVED
CITY OF KELSO

NOV 29 2010

CITY MANAGER'S
OFFICE

Dutch Bros. Kelso - Addendum to Lease

Dear Shelly,

Thank you for all your help getting this document through the process and to the correct people so quickly. We are excited about the opportunity to come to Kelso and bring Dutch Bros. energy and quality service to town.

This addendum will be effective upon the assignment of the Lease from Karen to Dutch Bros. pursuant to our purchase agreement. I do not have a closing date yet at this point but expect to move forward quickly with the closing of the purchase and remodeling.

Please let me know if you have any questions or concerns; otherwise, I will just let you know when the big grand opening party will occur.

Best regards,

Alan Harper

CC: Karen Deutsch

ASSIGNMENT and AMENDMENT OF LEASE AGREEMENT

DATE: November 26, 2010

BETWEEN: DB Franchising USA, LLC
PO Box 1929
Grants Pass, OR 97528 ("Assignor")

AND: Mark Luna
104 Kelso Dr.
Kelso, WA 98626 ("Assignee")

Assignor and City of Kelso (Landlord) are parties to a Lease dated March 8, 1999 and extended various times, lastly by "Addendum to Lease" dated October 8, 2010 (the "Lease"), a copy of which is attached to this Assignment of Lease Agreement ("this Assignment"), pertaining to certain premises (the "Premises") more particularly described in the Lease. Assignor desires to assign its rights under the Lease to Assignee, and Assignee desires to assume Assignor's obligations under the Lease.

NOW, THEREFORE, in consideration of mutual promises set forth in this Assignment, the parties agree as follows.

Section 1. Assignment and Assumption

1.1 Assignment. Assignor hereby assigns to Assignee all its rights, title, and interest in, under, and to the Lease effective on November 1, 2010 or the earliest date Assignor had title to the Premises (the "Effective Date").

1.2 Assumption. Assignee hereby accepts the assignment and assumes and agrees to perform all obligations of the tenant under the Lease, in strict accordance with the terms of the Lease, from and after the Effective Date.

Section 2. Indemnification

2.1 Indemnity by Assignor. Assignor hereby agrees to indemnify, defend, protect, and hold harmless Assignee from and against any and all losses, liabilities, claims, costs, and expenses (including reasonable attorney fees) arising out of or in any way related to Assignor's failure to perform its obligations under the Lease or this Assignment or arising out of use of the Premises by Assignor or its agents, employees, contractors, customers, or invitees before the Effective Date.

2.2 Indemnity by Assignee. Assignee hereby agrees to indemnify, defend, protect, and hold harmless Assignor from and against any and all losses, liabilities, claims, costs, and expenses (including reasonable attorney fees) arising out of or in any way related to Assignee's failure to perform its obligations under the Lease or this

Assignment or arising out of use of the Premises by Assignee or its agents, employees, contractors, customers, or invitees from and after the Effective Date.

Section 3. Status of Lease; Premises; Property Removal

3.1 Status of Lease. Assignor represents and warrants that the Lease is in full force and effect in accordance with its terms, that the Lease has not been amended or modified except as stated in this Assignment, and that Assignee has agreed to pay rent dating back to November 1, 2010. Assignor believes that Landlord has amended the lease and consented to an assignment of the Lease to Assignor from the prior Tenant, Karen Deutsch. Assignor is aware that Landlord has requested certain modifications to the Addendum to the Lease and has represented that it must seek approval by the City Council of Kelso.

3.2 As Is Condition. Assignee hereby accepts the Premises in its "AS IS" condition at the Effective Date. Assignor shall not be obligated to make any alterations or improvements to the Premises whatsoever.

3.3 Personal Property. Assignee acknowledges that he has purchased the personal property located on the Premises directly from the prior Tenant, Karen Deutsch together with improvements, alterations, fixtures, and equipment as a condition of being assigned the Lease.

Section 4. Landlord's Consent; No Release of Assignor

The effectiveness of this Assignment is conditioned on Landlord's first executing the consent provision on the last page of this Assignment. The parties acknowledge that Landlord's consent to this assignment shall not be construed as a waiver of Landlord's right to withhold consent to any subsequent assignment, sublease, or other transfer of the Lease or any interest in the Premises. As set forth in paragraph 8 of the Addendum to Lease dated October 8, 2010, Landlord hereby consents to the assignment to Assignee, a franchisee of the Dutch Bros. Coffee System and releases Assignor from its obligations under the Lease and Addendum.

Section 5. Miscellaneous

5.1.1 Effect of Assignment. This Assignment does not amend the Lease, except as specified herein, otherwise the Lease is unmodified and is in full force and effect.

5.1.2 Base Rent Clarification. The parties, including Landlord wish to clarify that paragraph 3 of the Addendum, as it modifies Section 2 of the Lease dated March 8, 1999 as follows: The Addendum shall be amended replacing paragraph 3 of the Addendum in its entirety and substituting,

“The parties agree that base rent under this Lease shall be \$1,659.08 commencing the first day of the month following execution of this Addendum by the parties and shall remain the same base rent for the five year period set forth above in Section 2. Tenant shall also pay in addition, the excise tax imposed by RCW Chapter 82.29A, as now enacted or hereinafter amended. The parties acknowledge that this amount will change over the duration of the Lease but the initial calculated total monthly payment of base rent and due tax is \$1,820.72.”

5.2 Integration. This Assignment contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements among them with respect thereto.

5.3 Brokers. Assignor and Assignee each represent and warrant to the other and to Landlord that it has used no real estate broker or finder in connection with this Assignment. Assignor and Assignee agree to defend, indemnify, and hold harmless each other and Landlord from and against any claim for a brokerage commission or a fee asserted by any party in connection with any contacts with such indemnifying party.


5.4 Attorney Fees. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted or if the services of an attorney are retained to interpret or enforce any provision of this Assignment or with respect to any dispute relating to this Assignment, the prevailing party shall be entitled to recover from the losing party its attorney fees, paralegal fees, accountant fees, and other expert fees, as well as all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

5.5 Further Instruments. Each party agrees to execute such further instruments as may be reasonably required to consummate the transactions contemplated by this Assignment, as long as the terms thereof are fully consistent with the terms of this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

ASSIGNOR

DB Franchising USA, LLC



Travis Boersma

Dated: 11-23-10

ASSIGNEE

Mark Luna

Dated: _____

Landlord's Consent

Landlord hereby consents to the assignment of the Lease in accordance with, and subject to, the terms, conditions, and covenants of the foregoing Assignment.

LANDLORD

By _____

Its _____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Kelso Senior Center
Catlin Hall Lease

Agenda Item: _____

Dept. of Origin: City Managers Office

For Agenda of: December 7, 2010

Originator: Dennis Richards

PRESENTED BY:

Dennis Richards, City manager

City Attorney:

City Manager:

Agenda Item Attachments:**SUMMARY STATEMENT:**

City Manager Richards is seeking Council Approval to enter into an continued agreement the Kelso Senior Association to lease Catlin Hall for the continued use as the Kelso Senior Center.

RECOMMENDED ACTION:

Staff Recommends Council allow City Manager Dennis Richards to enter into this agreement.

MEMORANDUM OF UNDERSTANDING

By and Between Kelso Senior Association and the City of Kelso

This MEMORANDUM OF UNDERSTANDING, hereinafter referred to as "AGREEMENT" made and entered into this ____ day of December, 2010, by and between the CITY OF KELSO hereinafter referred to as "CITY" and the KELSO SENIOR ASSOCIATION, hereinafter known as the "ASSOCIATION," to be the responsible party for the purposes of setting forth the conditions for the use of the City property for a Kelso Senior Center, 106 NW 8th Avenue in Kelso, Washington 98626.

The CITY agrees to appoint the ASSOCIATION as the representing body for the purpose described below.

PREAMBLE

Recitals

Whereas, The CITY has limited resources to provide services for the senior population within the City and wishes to partner with the ASSOCIATION to provide senior activities; and

Whereas, the CITY is the owner of the facilities and property at 106 NW 8th Avenue in Kelso, Washington, hereinafter referred to as the "PROPERTY"; and

Whereas, the CITY wishes to allow the ASSOCIATION to use the PROPERTY for the purposes of providing services and activities more particularly described below for seniors within the community; and

Whereas, the ASSOCIATION is a non profit entity, formed to provide services and activities for seniors within Kelso and the surrounding community; and

Whereas, the ASSOCIATION wishes to use the PROPERTY to assist the CITY in providing services and activities for seniors and thereby fulfill its mission.

Now Therefore, the CITY and the ASSOCIATION, in consideration of the mutual terms and conditions herein, agree as follows:

1. Use of Property

The ASSOCIATION and the CITY agree that the ASSOCIATION may use the PROPERTY in accordance with the terms and conditions of this AGREEMENT to provide and maintain a Senior Center for the use of the senior population in the City of Kelso, and their guests, at 106 NW 8th Avenue, Kelso, Washington. Activities will include, but not be exclusive to providing hot senior luncheons, space for card and optional game playing, hosting speakers and meeting space for senior organizations and classes, providing space for dances and a gathering space for senior activities. Furthermore, the center can be used for dances, association-manned parties or events, a meeting place for senior planned travel trips, or ASSOCIATION functions that will benefit the mission of the ASSOCIATION, and assist them in meeting expenses.

The ASSOCIATION shall operate the Kelso Senior Center and agrees to use the facility associated with the City Parks and Recreation, for a minimum of five (5) days each week, from the hours of 9:00 A.M. to 3:00 P.M. each day, except for some holidays to be defined separately by mutual written agreement of the CITY and the ASSOCIATION. The hours may be expanded through a mutual written agreement by the CITY and the ASSOCIATION.

2. Name and Hours of Operation

The facility will be named the Kelso Senior Center.

3. City Responsibilities

It is agreed that additional hours of operation at the center can be used for dances, association-manned parties, be used as a meeting place for senior planned travel trips, or used for functions, such as seasonal bazaars, that will benefit the mission of the ASSOCIATION, and assist them in meeting expenses.

The CITY agrees to rent the facility at 106 NW 8th Avenue, in Kelso, to the Association for \$1 per year and in further consideration, the CITY shall provide the services set forth in this Agreement.

The CITY agrees to provide and shall be responsible for the total cost of utilities (lights, electricity, heat and water) to the building on said property.

The CITY will provide insurance through its self insurance pool, WCIA on the building and PROPERTY for damage by weather or natural disaster.

The CITY will allow a set of keys to the facility to be distributed to the ASSOCIATION officers, to allow access as needed.

4. Association Responsibilities

The ASSOCIATION shall obtain liability insurance in the amount of \$1,000,000 per occurrence and \$1,000,000 general aggregate for its use of the PROPERTY and provision of services and activities to seniors. This policy shall name the CITY as an additional insured on the Policy. The ASSOCIATION shall furnish a certificate of insurance to the CITY evidencing the required insurance before commencing any activities on the PROPERTY.

The ASSOCIATION shall provide the CITY annually, by January 15th of each year, a schedule of events and use of the PROPERTY by the ASSOCIATION that will be in compliance with this AGREEMENT, City Ordinances and policies and the ASSOCIATION's mission. The CITY shall have the right to disapprove of any use not consistent therewith.

The ASSOCIATION will be responsible for unlocking and relocking the facility daily and before and after scheduled events. The ASSOCIATION agrees that it will not duplicate or lend the access keys to outside organizations or allow their use by any person not an officer or employee of the ASSOCIATION. The ASSOCIATION will be responsible for opening, closing and maintaining surveillance of the property during the hours agreed upon to be open to the public. The ASSOCIATION agrees to report any damage, vandalism, or illegal activities to the CITY immediately.

The ASSOCIATION agrees that the personnel or volunteers, acting under the authority of the ASSOCIATION, will oversee the provision of access to the PROPERTY by seniors and senior associations, associated by further agreement, will comply with all requests by the CITY for use and maintenance of the PROPERTY as presented in writing and mutually agreed upon.

The ASSOCIATION agrees that it be responsible for the maintenance of the PROPERTY and will use customary diligence in the care and maintenance of the PROPERTY to keep the PROPERTY in a clean and safe condition, dispose of all rubbish, garbage, and other waste in a clean and safe manner, keep and use in a reasonable manner all landscaping and all plumbing, electrical, sanitary, heating, ventilating and other facilities and appliances on the PROPERTY.

TERMS OF AGREEMENT/RENEWALS/TERMINATION/REVISIONS

1. Term.

The initial term of this AGREEMENT shall be from January 1, 2011 through December 31, 2011. Thereafter, the AGREEMENT shall be automatically renewed for successive one-year terms. Either party may terminate this AGREEMENT by giving written notice to the other party, on or before December 1, of its intention not to renew for the succeeding calendar year. The AGREEMENT may be terminated immediately by either party in the event of a substantial breach of this AGREEMENT by the other party. This AGREEMENT supersedes and replaces all similar and prior AGREEMENTS between the parties.

2. Indemnification.

The ASSOCIATION agrees to indemnify and hold the CITY, its elected officials, officers employees, agents, and volunteers harmless from any and all claims, demands, losses, actions, and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this AGREEMENT to the extent caused by the negligent acts, errors, or omissions of the ASSOCIATION, its agents, employees, or volunteers or by the ASSOCIATION's breach of this AGREEMENT.

The CITY agrees to indemnify and hold the ASSOCIATION, its elected officials, officers employees, agents, and volunteers harmless from any and all claims, demands, losses, actions, and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this AGREEMENT to the extent caused by the negligent acts, errors, or omissions of the CITY, its agents, employees, or volunteers or by the CITY's breach of this AGREEMENT.

3. Non-Discrimination.

In the use of the PROPERTY and the performance of all services under this AGREEMENT, the ASSOCIATION or its employees, agents, representatives or volunteers shall not discriminate against any person because of sex, age, race, color, creed, national origin, marital status, or the presence of any disability. The ASSOCIATION shall comply with the Washington Law against Discrimination and with any other applicable federal or state law or local ordinance regarding non-discrimination.

4. Amendments.

Revisions, changes or modifications may be proposed by the ASSOCIATION or by the CITY, in writing at least 30 days in advance of the proposed effective date, and be mutually agreed upon in writing by the Parties hereto before they will be effective.

5. Governing Law.

It is understood that this AGREEMENT shall be governed and interpreted in accordance with the provisions of applicable State laws and the City's resolutions and ordinances.

IN WITNESS WHEREOF, the parties hereto have cause this AGREEMENT to be executed this _____ day of December, 2010.

CITY OF KELSO

KELSO SENIOR ASSOCIATION

Dennis Richards- Manager-City of Kelso

KSA President

Date: _____

Date: _____

ATTEST:

City Clerk

KSA Vice President

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Water Wheeling Agreement between the City of
Kelso and Beacon Hill Water and Sewer District

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: December 7, 2010

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

Cost of Item: _____

City Manager: Dennis Richards

AGENDA ITEM ATTACHMENTS:

Water Wheeling Agreement between City of Kelso and Beacon Hill Water and Sewer District (BHSD)

SUMMARY STATEMENT:

This agreement updates significant scope, fees, calculation methods, and ownerships for the existing 1978 agreement. The city attorney has reviewed the agreement and also provided legal updates.

RECOMMENDED ACTION:

Staff recommends council make a motion authorizing the City of Kelso to enter into the attached Water Wheeling Agreement with Beacon Hill Water and Sewer District.

December 2010

WATER WHEELING AGREEMENT

BETWEEN

CITY OF KELSO

AND

BEACON HILL WATER AND SEWER DISTRICT

WATER WHEELING AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2010 by and between the City of Kelso, a municipal corporation, formed and existing under the Laws of the State of Washington, hereinafter called “Kelso” and BEACON HILL WATER AND SEWER DISTRICT of COWLITZ COUNTY, WASHINGTON, a public utility district, formed and existing under the Laws of the State of Washington, hereinafter called the “District”.

ARTICLE I

DEFINITION OF TERMS

The following words and phrases used in this Agreement shall have the following meaning:

1. “Wheeling Service” shall mean the utilization of the capacity of a portion of a Local Distribution System of one water purveyor to transmit water belonging to another water purveyor.
2. “Local Distribution System” shall mean all of the facilities owned or operated by the purveyors for the distribution of water.
3. “Carrier” shall mean that utility providing wheeling service.
4. “Receiver” shall mean that utility receiving wheeling service.
5. “System Point of Delivery” shall mean that point (or group of points classified as a single point) on a Carrier’s system where water is received by a Carrier for transmission to a Receiver.

6. “Receiver’s Point of Delivery” shall mean that point (or group of points classified as a single point) on a Carrier’s system where water is delivered to a Receiver from an intervening Carrier.

7. “Receiver’s Point of Metering” shall mean that point (or group of points classified as a single point) where water delivered to a Receiver is metered for the purpose of billing.

ARTICLE II

WHEELING APPLICATIONS

The applications of Wheeling Service covered by this Agreement shall be designated as follows:

Wheeling Service Applications:

<u>Receiver Area</u>	<u>Carrier</u>	<u>Receiver</u>
Cowlitz Gardens	Kelso	District
Williams-Finney	Kelso	District

System point of delivery for both areas shall be the point of metering located adjacent to the City of Longview’s Fishers Lane water treatment facility site at which Kelso’s 8-inch transmission line connects to the City of Longview’s facilities.

The parties may extend Wheeling Service to additional areas by amending this Agreement.

ARTICLE III

RIGHTS OF PARTIES

Wheeling Service provided under this Agreement shall be based on the utilization by the Receiver of surplus capacity in the existing facilities of the Carrier. The Carrier shall have the right to determine the amount and availability of capacity in its Local Distribution System for use by the Receiver. If a change is required in the Carrier's facilities which are being used to provide Wheeling Service, the Carrier shall have the right, in its sole discretion to make the all decisions in the planning and construction of any new facilities, provided however, that the Carrier shall consult with the Receiver before making a final planning or construction decision related to the Local Distribution System being used to provide Wheeling Service.

In the event sufficient surplus capacity to provide Wheeling Service does not exist in the Carrier's facilities, the parties shall agree, subject to engineering and economic feasibility, to negotiate to develop a plan for improving and expanding the Carrier's facilities and the sharing of costs of the new or expanded facilities by the Receiver and the Carrier.

It shall be the responsibility of each party to maintain and operate their Local Distribution System at standards not less than those required by applicable State and Federal regulatory agencies. Each party shall endeavor to make improvements to and maintain its Local Distribution System to keep water losses at a prudent level.

The parties may, from time to time prepare and amend such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE IV

CHARGES FOR WHEELING SERVICE

Charges for Wheeling Service shall be based on the Carrier's annual cost of owning, operating, and maintaining the facilities used in wheeling, and shall be determined on the basis of use of the facility by the Carrier and Receiver.

For the purpose of determining water wheeling charges the Receiver shall assume an average loss factor of ten percent (10%) through the Carrier's facilities.

The wheeling rate for each of the wheeling applications shall be determined as set forth in Appendix A. After 2014 any or all of the wheeling rates applicable under this Agreement shall be reviewed jointly by the parties and be adjusted to the current actual annual distribution costs divided by the annual volume used. Rates shall automatically be adjusted by 80% of the Urban Portland-Salem CPI if no other adjustment is made. If the Carrier adjusts the rates, the new rates shall apply commence with the next regular billing rendered after the effective date of the rate change.

ARTICLE V

METER SYSTEM PROTOCOL

The Wheeling Service Applications shall be metered by way of individual master meters as follows:

1. The master meters shall be calibrated on or before June 1 of each year by the District. Written certification of calibration shall be provided to Kelso within 30 days of calibration.
2. Meter readings for Wheeling Service Applications shall be provided bi-monthly by the District to Kelso.
3. Charges for Wheeling Service shall be billed by Kelso on the basis of metered delivery of water unless otherwise agreed to in writing. Billings shall be submitted bi-monthly and shall be paid within thirty (30) days after the bills have been submitted.
4. Williams-Finney currently has and shall maintain a 4" Master Meter.
5. Cowlitz Gardens shall have a Master Meter installed by the District prior to December 31, 2011. Until Cowlitz Gardens' Master Meter is installed, the individual service meters shall be totaled to provide the measured volume total.

ARTICLE VI

EXPANSION OF SERVICE AREA

It is acknowledged by both parties that the Water Service Areas Agreement includes a provision whereby "when areas annex to the city, the city may take appropriate steps to acquire ownership of existing systems within the service area." In the event a change of ownership of any of the portions of the District's water system served under the Agreement should occur, it is agreed that this Agreement relating to that Wheeling Service Application location shall be automatically terminated as of the date of transfer

of the system, but all liabilities accrued up to the date of transfer shall be and are hereby preserved.

ARTICLE VII

WAIVER OF EXISTING AGREEMENTS

No waiver by either party of any terms or conditions of this Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

The existing Wholesale Water Supply Agreement, executed between Kelso and the District on January 20, 1976, and any other agreement, negotiation, or representation between the parties hereto relating to the subject matter hereof are by mutual consent hereby terminated and superseded at the effective date of this Agreement, but all liabilities accrued thereunder shall be and are hereby preserved.

ARTICLE VIII

INSURANCE AND INDEMNIFICATION

The City and the District each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. In lieu of the requirement to obtain the required insurance hereunder, each party agrees that the other's participation and

membership in a self-insurance pool, meeting the above minimum coverage limits shall constitute compliance with this section.

To the fullest extent permitted by law, each party agrees to defend, indemnify and hold the other party, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the indemnifying party. More particularly and in addition, this indemnification provision shall specifically apply to instances of interruption in service or availability of capacity due to malfunctions of the Local Distribution System.

ARTICLE IX

NO THIRD PARTY BENEFICIARY

The Agreement is made and entered into for the benefit of the Parties hereto and their successors and assigns. No other person or entity is an intended third party beneficiary. No other person or entity shall have any right of action under this Agreement.

ARTICLE X

FORCE MAJEURE

The City will not be responsible for delays or interruptions in delivery due to acts of God, fire, strikes, epidemics, war, riot, or delay in transportation, provided the City notifies the District immediately in writing of each pending or actual delay or interruption.

ARTICLE XI

EFFECTIVE DATE OF AGREEMENT

This Agreement shall be considered in full force and effect as of the date of execution and for the purpose of rendering bills for Wheeling Service in each wheeling location, the Agreement shall be effective with metered delivery of water commencing on the next regular meter reading date following execution of this Agreement.

ARTICLE XII

EXECUTION AND TERM OF AGREEMENT

This Agreement shall continue in full force and effort for a period of five (5) years from the effective date hereof, and from year to year thereafter, unless cancelled by either party upon twelve (12) months' notice in writing to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

CITY OF KELSO

BEACON HILL SEWER DISTRICT

By: _____

By: _____

Date

Date

ATTEST:

Appendix A.

Water Wheeling Rates:

Rates for this agreement bulk water for resale purposes shall be at cost as determined by the actual annual Kelso system distribution cost multiplied by the ratio of total volume consumed by customer over the total Kelso water produced annually. The base year in this calculation is 2009. Rates were raised for 2010-2014 at 7.5% /year to match Kelso's preprogrammed adopted rates in place to accomplish the distribution CIP through 2014. Rates are for every 100 cubic feet of water delivered as follows:

2009	2010	2011	2012	2013	2014
\$1.36	\$1.46	\$1.57	\$1.69	\$1.82	\$1.96

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Park Board Member Recommendation

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: December 7, 2010

Cost of Item: _____

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

City Manager: Dennis Richards

AGENDA ITEM ATTACHMENTS:

Dan Jones - Application for Park Board

SUMMARY STATEMENT:

An application was received October 29, 2010 from Dan Jones for Park Board Position No. 1, currently vacant as previous Park Board Member, James Webb became a City Council Member.

At the November 18, 2010 Kelso Park Board Meeting the Board unanimously voted "to send application on to council for approval".

RECOMMENDED ACTION:

Staff is recommending council make a motion accepting Dan Jones' application for him to officially become a Park Board Member.

Applications for City of Kelso

Commissions, Boards, and Committees



Name: Dan Jones

Address: 206 Teresa Way Apt 6

City: Kelso

State: Washington

Zip: 98626

Phone: (360)442-8138

How long have you lived in Kelso: 3 years

Signature: 

Date: 10/28/2010

RECEIVED
CITY OF KELSO
OCT 29 2010

Please indicate the boards, commissions or committees on which you would be interested in serving. Check all that apply.

- ☐ Board of Adjustment and Appeals
- ☐ Civil Service
- ☐ Library Board
- ☒ Planning Commission
- ☐ Housing Authority
- ☒ Park Board
- ☐ Highlander Festival
- ☐ Lodging Tax Advisory Committee
- ☐ Stormwater Advisory Committee
- ☐ Other _____

Return completed application to:

City of Kelso
PO Box 819
Kelso, WA 98626

Fax number 360-423-6591

What is your interest/objective in serving on this Board/Committee? I am interested in serving our community; and, help make it a better place to live & work for those of us here now and for the people and businesses that will come.

Do you have other civic obligations, if so what are they? Currently none.

What previous Experience do you have? As a team leader at Entek I assist in making and enforcing company policies and serve as an instructor for continuing education for our technicians. While serving as a Longview Police Reserve Officer (2001-2008) I assisted in the enforcement of the codes of Washington and Longview, prevention and detection of crime, apprehension of criminals, and maintaining public order.

Current employment/Educational background: I am currently employed by Entek Corporation as a HVAC technician and industrial team leader. Education: graduated Kalama HS 1993; AA degree from LCC in Electronics 1996; HVAC Technician Certification from Inland Northwest HVAC Assn. 1999; Graduated Southwest Washington Reserve Police Academy 2001.

References with phone numbers please: Allan Shero-President of Entek Corp. (360)957-7721; Dave Campbell-Service Manager of Entek Corp. (360)431-4132; Rick Roberson-Weyerhaeuser Company/Kelso City Council (360)560-5429

*****Additional Information May Be Supplied*****

By signing this form, you agree to allow the City of Kelso to release to the press your answers, information and additional documents that you supplied with this application.

SECTION 1. GENERAL.

These rules constitute the official rules of procedure for the Kelso City Council. In all decisions arising from points of order which are not covered by these rules, pursuant to KMC 2.04.060, the Council shall be governed by Robert's Rules of Order (newly revised), a copy of which is maintained in the office of the Kelso City Clerk. The City Attorney shall decide all questions of interpretations of these rules and other questions of a parliamentary nature which may arise at the Council meeting.

SECTION 2. ORGANIZATION.

- A. Swearing in of New Councilmembers. New Councilmembers shall be sworn in by the City Clerk or delegate. The swearing in will occur at the first meeting of the City Council held in January following certification of the election.
- B. Election of Mayor and Deputy Mayor. The motion to elect the Mayor and the Deputy Mayor will be placed on the Agenda of the first regular City Council meeting in January following certification of the election and the Mayor and Deputy Mayor will serve in office for a term as specified by city charter. During the election of Mayor and Deputy Mayor, the city clerk shall serve as Chair.

In the event the Mayor is unable to serve the remainder of the term, due to his or her removal from office, or his or her resignation as Mayor or from the City Council, or upon his or her death, the Deputy Mayor shall serve as Mayor for the remainder of that term and a new Deputy Mayor shall be elected.

In the event the Deputy Mayor is unable to serve the remainder of the term, a new Mayor shall be elected at the next regular meeting.

- 1. Nomination Procedure. No one Councilmember may nominate more than one person for a given office until every member wishing to nominate a candidate has an opportunity to do so. Nominations do **not** require a second vote. The Chair will repeat each nomination until all nominations have been made. When it appears that no one else wishes to make any further nominations, the chair will ask again for further nominations and if there are none the Chair will declare the nominations closed. A motion to close the nominations is **not** necessary.
 - 2. Voting Procedure. After nominations have been closed, voting for Mayor takes place in the order nominations were made. Councilmembers will be asked for a raise of hands. As soon as one of the nominees receives a majority vote (four votes), then the Chair will declare the nominee elected. No votes will be taken on the remaining nominees. A tie vote results in a failed nomination. If none of the nominees receive a majority vote, the Chair will call for nominations again and repeat the process until a single candidate receives a majority vote before the Office of Deputy Mayor is opened for nominations.
- C. General Decorum.
 - 1. While the Council is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the Council, nor disrupt any member while speaking, nor refuse to obey the orders of the Council or the Mayor, except as otherwise provided in these Rules.

2. Any person making personal or slanderous remarks or who becomes disorderly while addressing the Council or while in the Council Chamber while the Council is in session, shall be asked to leave by the Presiding Officer.
- D. Confidentiality.
1. Councilmembers shall keep confidential all written materials and verbal information provided to them during Executive Sessions, to ensure that the City's position is not compromised. Confidentiality also includes information provided to Councilmembers outside of Executive Sessions when the information is considered to be exempt from disclosure under the Revised Code of Washington or under Public Disclosure Ordinance adopted by the Council.
 2. If the Council, after Executive Session, has provided direction or consensus to City staff on proposed terms and conditions for any confidential or privileged issue, all contact with any other party shall be made by the designated City staff representative handling the issue. Councilmembers should consult with the City Manager and/or City Attorney prior to discussing such information with anyone other than other Councilmembers, the City Attorney or City staff designated by the City Manager. Any Councilmember having any contact or discussion with any person other than those listed above on any such confidential or privileged issue shall make full disclosure to the City Manager and Council in a timely manner.
- E. City Clerk. The Clerk or an authorized Deputy Clerk shall attend all Council Meetings. If the Clerk and the Deputy Clerk are absent from any Council Meeting, the City Manager shall appoint a Clerk Pro Tempore for that meeting only.

SECTION 3. OFFICERS.

- A. Presiding Officers. The Mayor, or in his or her absence, the Deputy Mayor, shall be the Presiding Officer of the Council. In the absence of both the Mayor and the Deputy Mayor, the Council shall appoint one of the members of the Council to act as a temporary Presiding Officer.
- B. Presiding Officer's Duties. It shall be the duty of the Presiding Officer to:
1. Call the meeting to order
 2. Keep the meeting to its order of business
 3. Control discussion in an orderly manner
 - a. Every Councilmember who wishes an opportunity to speak must be recognized by the chair.
 - b. Permit audience participation at the appropriate times.
 - c. Require all speakers to speak to the question and to observe the rules of order.
 4. State each motion before it is discussed and before it is voted upon.
 5. Put motions to a vote and announce the outcome.
- C. Presiding Officer, Question or Order. The Presiding Officer shall decide all questions of order, subject to the right of appeal to the Council by any member.
- D. Request for Written Motions. Motions shall be reduced to writing when required by the Presiding Officer of the Council or any member of the Council. All resolutions and ordinances shall be in writing.

SECTION 4. DUTIES AND PRIVILEGES OF COUNCILMEMBERS.

- A. Forms of Address. The Mayor shall be addressed as "Mayor (surname)." "Your Honor," or Mr./Madam Mayor. Members of the Council shall be addressed according to their preference as "Councilmember (surname)," "Councilor (surname)," or Mr./Mrs./Miss/Ms. (surname).
- B. Seating Arrangement at Regular Meetings. The Mayor shall sit at the center of the Council, and the Deputy Mayor shall sit at the right hand of the Mayor. Other Councilmembers are to be seated in accordance with KMC 2.04.070. If there is a dispute, seating shall be in position order.

SECTION 5. CITY ADVISORY COMMITTEES

The City of Kelso's Commissions, Committees, and Task Forces provide an invaluable service to the City. Their advice on a wide variety of subjects aids the Council in the decision-making process. Effective citizen participation is an invaluable tool for local government. All City Advisory Committees are advisory to the City Council and are not authorized to take independent action representing the City with other agencies or bodies.

- A. Establishment of Advisory Bodies. These advisory bodies will be established by City Resolution or Ordinance, if required by state statute. The enacting resolution will set forth the size of each advisory group, which will be related to its duties and responsibilities; the term of office of its members; a statement of its purpose and function; and time lines, if relevant to the scope of work. The Council may dissolve any advisory body that, in their opinion, has completed its working function or for any other reason.
- B. Appointments to Advisory Bodies. Vacancies may be advertised so that any interested citizen may submit an application. Applicants are urged to be citizens of the City of Kelso, but applications from residents living outside of the corporate boundaries may be considered if authorized by the resolution or ordinance establishing the advisory body.

Appointments to advisory bodies will be made by the City Council during a regularly scheduled meeting. Newly appointed members will receive a briefing by the Commission, Committee, or Task Force Chairperson and/or City staff regarding duties and responsibilities of the members of the advisory body. Appointees to advisory bodies may be removed prior to the expiration of their term of office by a majority vote of the City Council.

- C. Conduct of Business. The advisory body will normally adopt rules for transaction of business, and will determine the number of meetings necessary for the business needs of the advisory group, unless otherwise established in the enacting resolution or ordinance. All meetings are subject to the public meetings laws of the State of Washington and City Ordinance.

SECTION 6. COUNCIL COMMITTEES/APPOINTMENTS

Council committees are policy review and discussion arms of the City Council. Committees may study issues and develop recommendations for consideration by the City Council. Committees may not take binding action on behalf of the City.

The City Council may meet for study or special project purposes as a Committee of the Whole or may establish Council subcommittees with three or fewer members.

Council Committee structure shall be as determined by the City Council in January of each year and may include:

- A. Council Committee of the Whole - (Seven Councilmembers)

- B. Subcommittees of the City Council - Ad hoc and informal working or study group (three or fewer Councilmembers)
- C. Councilmember appointments - to task teams or City advisory boards, commissions and committees (three or fewer Councilmembers)
- D. Liaison/Representative Appointments - to other advisory bodies or groups.

SECTION 7. MEETINGS.

All Council Meetings shall comply with the requirements of the Open Meetings Act (RCW Section 42.30). All Regular Meetings, Special Meetings and Workshops of the Council shall be open to the public.

The City Manager, or his or her designee, shall attend all meetings of the City Council including Regular meetings, special meetings, workshops, and executive session, except if Council meets in Executive Session with the City Attorney on matters of potential conflict for the City Manager.

- A. Regular Meetings. The Council shall hold Regular Meetings on the first and third Tuesday of each month. The Regular Meeting will begin at 7:00 p.m., unless an Executive Session is scheduled at the beginning of the agenda.
- B. Workshops. The Council may hold Workshops from time to time as it deems necessary. Workshops will be informal meetings for the purpose of reviewing: forthcoming programs and future Council agenda items; progress on current programs or projects; or other information the City Manager feels is appropriate.
- C. Special Meetings. Special Meetings may be held by the Council subject to notice requirements prescribed by State law. Special Meetings may be called by the Mayor, Deputy Mayor, or any three members of the City Council by notice delivered by regular or electronic mail to each member of the Council and to each local media outlet which has requested notice at least twenty-four hours before the time specified for the proposed meeting. The notice of such Special Meetings shall state the subjects to be considered, and no subject other than those specified in the notice shall be considered.
- D. Executive Sessions. The Council may hold Executive Sessions from which the public may be excluded, for those purposes set forth in RCW Chapter 42.30.110. Before convening an Executive Session, the Presiding Officer shall announce the purpose of the Session and the anticipated time when the Session will be concluded. Should the Session require more time, a public announcement shall be made that the Session is being extended. No formal action or decision of the Council may be taken in Executive Session.
- E. Emergency Meetings. If at any time there is a need for expedited action by the City Council to meet an emergency situation, the Mayor, or in the absence of the Mayor, the Deputy Mayor or any three members of Council, may call an emergency meeting at a place and time as necessary, and the noticing requirements of Chapter 42, RCW, or City ordinance or rule, may be waived.
- F. Adjournment. Regular and Special Council Meetings shall adjourn at 10:00 p.m.; Workshops shall adjourn at 10:00 p.m. The adjournment times established hereunder may be extended to a later time certain upon approval of a motion by a majority of the Council. During regular and special meetings, any Councilmember may call for a "Point of Order" at 9:30 p.m. to review agenda priorities.
- G. Meeting Place. Council Meetings will be a time and place as Council directs, except that Regular and/or Special meetings shall always be held within the boundaries of the City

- H. Public Notice. The City shall comply with the provisions of RCW 35A.12.160.

SECTION 8. COUNCIL ORDER OF BUSINESS.

- A. Order of Business for Regular Meetings. Pursuant to KMC 2.04.050, the order of business for each Regular Meeting shall be as follows:
1. Call to Order
 2. Roll Call, Flag Salute
 3. Approval of Minutes of Previous Meeting
 4. Commendations/Presentations
 5. Citizens' business
 6. Public Hearing
 7. Consent agenda and Auditing of Accounts
 8. Ordinances, Resolutions and Motions
 9. Reports of City Manager and Department Heads
 10. Council Comments/Council Committee Reports
 11. Executive Session (as necessary)
 12. Adjournment
- B. Council Agenda. When necessary, the Mayor or other Councilmember, with the consent of the Council, may change the order of business. All ordinances or resolutions must be on the agenda to be voted upon; a motion to suspend the rules would be necessary in order to vote on an ordinance or resolution not on the agenda.

SECTION 9. CONDUCT OF BUSINESS

- A. Motions. Business is brought before the council by motions, which constitute a formal procedure for taking actions. To make a motion, a member must first be recognized by the presiding officer. After the member has made a motion (and after the motion is seconded if required) the chair must then restate it or rule it out of order, then call for discussion.
- B. Debate. As required by Robert's Rules of Order, a member may speak twice on each motion. Each time a Councilmember is recognized, the Councilmember may speak to the motion for no longer than five minutes. No Councilmember may speak a third time to a motion without the consent of the Council.
- C. Staff Input. During regular or special meetings of the Council, the presiding officer will call for a staff report on business items as the agenda is considered and before a motion is entertained by the presiding officer. Once a motion is pending, debate is limited to Councilmembers; additional staff input will be limited to providing clarification on issues if requested by a Councilmember.
- D. Reconsideration. A motion to reconsider is in order during the meeting after a motion has been acted upon either at the same meeting or at the next regular or special meeting of the Council. It must be made by a member who voted on the prevailing side, i.e., if a motion fails to pass, reconsideration must be moved by one who voted against the motion. It is debatable and requires a majority vote.

SECTION 10. PUBLIC TESTIMONY.

A. Public Comment

During Regular or Special Meetings of the Council, public comments will be invited during the Public Comment portion of the agenda. The public is also invited to provide written comment on any non-quasi-judicial or legislative matter. It is encouraged that such written comments be filed with the clerk by 1:00 p.m. of the Wednesday preceding the Regular Meeting. If written comments are given at the meeting, the presenter should provide eleven copies for the Council and staff.

In addition, public oral testimony may be taken on other non-quasi-judicial or legislative matters as they arise during the course of the meeting agenda. However, once a motion is pending, debate is limited to Councilmembers and no further public comment will be taken, unless a Councilmember requests further testimony.

Public comments should be limited to no more than five minutes per person. The Presiding Officer may, with consent of the Council, further limit individual comment length and total comment time allocated to a topic.

The Council may more informally take public comments at a Workshop, when appropriate and practical. In addition, individuals may petition to appear on the agenda of a future Workshop to address the Council on specific issues or requests. Such petitions should be directed to the City Clerk or the City Manager for scheduling up to 15 minutes on a future Workshop Agenda as time allows.

- B. Identification of Speakers. Persons testifying shall identify themselves for the record as to name, address and organization.
- C. Instructions for Speakers. An instruction notice and signup sheet will be provided at the entrance to the Council chambers. Persons testifying should address their comments to the City Council, not the audience.
- D. Addressing Council Outside of a Public Hearing or Public Comments. No person shall be allowed to address the Council while it is in session without the recognition of the Presiding Officer.

SECTION 11. CONSENT AGENDA.

- A. The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent agenda which: (a) have been previously discussed or policies set by the Council, or (b) based on the information delivered to members of the Council, by the administration, can be reviewed by a Councilmember without further explanation, or (c) are so routine or technical in nature that passage is likely.
- B. The motion to adopt the Consent agenda shall be non-debatable and have the effect of moving to adopt all items on the Consent agenda. Since adoption of any item on the Consent agenda implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent agenda. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for deliberation at the current or future Council Meeting.

SECTION 12. PUBLIC HEARINGS.

The Public Hearing is a formal opportunity for citizens to give their views for consideration in the legislative or policy-decision-making process. In addition, public hearings are required on quasi-judicial

actions which determine the legal rights, duties, or privileges of specific parties. The following rules shall be observed during public hearings:

A. Legislative/Information Gathering Public Hearing:

1. Open Public Hearing - The Mayor will open the public hearing.
2. Staff Presentation - For an initial presentation of background information from a City Department, a City Board, Commission, or Committee, or an organization such as the Fire District, the Library District, or the School District, no more than 20 minutes will be allowed, unless otherwise authorized by the Presiding Officer.
3. Citizen Comments - Comments will be limited to four minutes from individuals or from persons speaking as a representative of an organization, club, or group. The Presiding Officer may allow additional time for receipt of written testimony, when needed.
4. Staff Comments - Additional staff comments may be requested by Council following citizen comments.
5. Close Public Hearing - At the conclusion of Citizen or Staff Comments, the Presiding Officer will close the public hearing.
6. Council Deliberation.
7. Council Action.
8. Timekeeper. The City Clerk shall be the timekeeper.

B. Quasi-Judicial Public Hearings:

Public oral testimony shall not be given on quasi-judicial matters outside of a public hearing except on matters of procedure. If a quasi-judicial hearing is on the agenda, the public will be informed by the City Attorney as to what state law permits as to public comments. In addition, quasi-judicial hearings will be conducted in conformance to procedures outlined in other City ordinances.

SECTION 13. AGENDA PREPARATION.

- A. The Clerk will prepare a preliminary agenda for each Council Meeting specifying the time and place of the meeting and setting forth a brief general description of each item to be considered by the Council.
- B. An item for a Regular Council meeting may be placed on the preliminary agenda by any of the following methods:
 1. A majority vote of the Council;
 2. Council consensus;
 3. By any two Councilmembers, in writing or with phone confirmation, with signatures by fax or electronic mail allowed for confirmation of support, no later than 12:00 (noon) two business days prior to the meeting. The names of the requesting Councilmembers shall be set forth on the agenda;
 4. By the City Manager;
 5. By a Council Committee;

6. By the Mayor; or
 7. By the Deputy Mayor.
- C. Agenda items that are continued from one meeting to another will have preference on the agenda to the extent possible.

SECTION 14. EFFECT/WAIVER OF RULES.

It is the intent of the City Council that council procedures be periodically reviewed as needed, but no less than every two years. Accordingly, Council procedures shall be considered in the month of January of every even-numbered year, and may be considered at any other time that Council shall choose to review them.

These rules of procedure are adopted for the sole benefit of the members of the City Council to assist in the orderly conduct of Council business. These rules of procedure do not grant rights or privileges to members of the public or third parties. Failure of the City Council to adhere to these rules shall not result in any liability to the City, its officers, agents, and employees, nor shall failure to adhere to these rules result in invalidation of any Council act. The City Council may, by a two-thirds vote of those members present and voting, determine to temporarily waive any of the provisions herein. A two-thirds vote is five of seven votes, four of six votes, four of five votes, and three of four votes.

AGENDA SUMMARY SHEET

AGENDA ITEM: Ordinance 2nd reading.
Budget revision #3 for the 2010 fiscal year.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM # _____
FOR AGENDA OF: 12/7/2010
ORIGINATING DEPT: Finance
DATE SUBMITTED: 12/1/2010
COST OF ITEM: _____
AMT. BUDGETED _____
CITY ATTY. APPROVAL _____
CITY MGR. APPROVAL _____

AGENDA ITEM PAPERWORK:

SUMMARY STATEMENT/DEPT. RECOMMENDATION:
Due to unforeseen circumstances certain expenditures are coming in higher than originally anticipated.

NOTE: THIS REVISION WILL BRING ANTICIPATED RESERVE SPENDING TO APPROXIMATELY \$800,000 FOR FISCAL YEAR 2010.

- Revisions in the General Fund include the following:
- \$60,000 increase for the Municipal Court Services for 2010.
 - \$54,000 for various police expenditures funded by grants.
 - \$170,000 increase in jail expenditures.
 - \$54,000 increase for early retirement incentives.
 - \$13,800 increase for Police Science Program.
 - \$20,000 increase in for liability insurance.

- Changes from the first reading to the second reading include the following:**
- \$9,000 decrease for early retirement incentives.
 - \$13,800 increase for Police Science Program.
 - \$20,000 increase in for liability insurance.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO AMENDING THE
2010 BUDGET TO REFLECT REVENUES AND APPROPRIATE FUNDS
TO COVER EXPENDITURES OVER AND ABOVE THOSE
ANTICIPATED AT THE TIME SAID BUDGET WAS ADOPTED.**

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That by reason of the inability of the City and its officials to foresee and compute with accuracy the actual revenue and necessary expenditures of public funds for the current expenses of the City, it is deemed necessary to make the following amendment to the budget by increasing the following line items by the amounts set forth below for the 2010 Budget, to-wit:

GENERAL FUND

Revenues

001-00-308-00-00	Beginning Fund Balance	\$ 361,600.00
001-00-333-00-00	Misc. Federal Grants	\$ 54,000.00
001-00-338-21-00	Law Enforcement Intergovt.	<u>\$ 13,800.00</u>
		\$ 429,400.00

Expenditures

001-01-511-60-20-1	Benefits	\$ 1,500.00
001-02-512-50-49-0	Municipal Court Services	\$ 60,000.00
001-03-513-10-20-1	Benefits	\$ 4,000.00
001-03-594-13-64-7	Office Equipment	\$ 2,100.00
001-05-515-21-41-0	Attorney's Fees	\$ 15,000.00
001-06-521-10-10-0	Salaries Police Admin.	\$ 20,000.00

001-06-521-90-41-0	Police Science Program	\$ 13,800.00
001-06-594-21-64-1	Machinery & Equipment	\$ 54,000.00
001-08-523-60-51-0	Jail	\$ 170,000.00
001-09-519-90-46-0	Insurance	\$ 20,000.00
001-12-532-10-12-0	Part-time Help	\$ 30,000.00
001-13-558-60-31-0	Supplies	\$ 5,000.00
001-13-559-10-10-0	Salaries	\$ 31,000.00
001-13-559-10-20-0	Benefits	<u>\$ 3,000.00</u>
		\$ 429,400.00

STADIUM FUND

Revenues

106-20-308-00-00	Beginning Fund Balance	\$ 13,500.00
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Expenditures

106-20-573-90-49-2	Misc. Events	\$ 13,500.00
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CAPITAL PROJECTS FUND

Revenues

301-60-317-30-00	Real Estate Excise Tax	\$ 15,000.00
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Expenditures

301-60-597-00-00-1	Transfer to Fund 206	\$ 15,000.00
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SEWER CAPITAL FUND

Revenues

408-28-308-00-00	Beginning Fund Balance	\$ 340,000.00
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Expenditures

408-28-535-08-00-1	Sewer Master Plan	\$ 90,000.00
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408-28-535-08-00-2	South 10 th Ave. Sewer	\$ 250,000.00
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SECTION 2. It is hereby ordered that the aforesaid sum be and the same is hereby appropriated in excess of the budget of the City of Kelso for 2010 and further that said budget be and the same is hereby amended accordingly.

SECTION 3. This Ordinance shall be in full force and effect five days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of December, 2010.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

AGENDA ITEM: 2nd Reading of an
Ordinance increasing the fee
to be charged for Business Licenses
from \$25 to \$50 annually.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM PAPERWORK:
See attached ordinance.

SUMMARY STATEMENT

Increase business license fees by \$25 as directed by council
to help cover the increased cost of license administration.

AGENDA ITEM # _____
FOR AGENDA OF: 12/7/2010
ORIGINATING DEPT: Finance
DATE SUBMITTED: 12/1/2010
COST OF ITEM: _____
AMT. BUDGETED _____

CITY ATTY. APPROVAL _____
CITY MGR. APPROVAL _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO AMENDING
ORDINANCE NOs. 3657 and 3558, CODIFIED AS KMC 5.02.060
REGARDING BUSINESS REGISTRATION/LICENSE FEES FOR
ENGAGING IN ANY BUSINESS IN THE CITY OF KELSO.**

WHEREAS, the City finds that the cost of administering and processing business registrations/licenses continues to increase annually; and

WHEREAS, the current fee for business registration/licensing has remained the same for many years; now therefore,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS
FOLLOWS:

SECTION 1. That Ordinance No. 3657 and 3558, codified as KMC 5.02.060, is hereby amended to provide as follows:

5.02.060 Fee.

The fee for such registration certificate shall be the sum of ~~twenty-five-dollars~~ *Fifty dollars* for each calendar year or any part thereof, which fee shall be in addition to all other license fees or taxes as required by the provisions of this chapter. The fee shall be paid before any registration certificate is issued.

SECTION 2. This Ordinance shall be in full force and effect five days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of
December, 2010.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

AGENDA ITEM: An ordinance setting
the 2011 property tax levy amount.
First reading.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM # _____
FOR AGENDA OF: 12/7/10
ORIGINATING DEPT: Finance
DATE SUBMITTED: 12/1/10
COST OF ITEM: _____
AMT. BUDGETED _____
CITY ATTY. APPROVAL _____
CITY MGR. APPROVAL _____

AGENDA ITEM PAPERWORK:

SUMMARY STATEMENT/DEPT. RECOMMENDATION:

The levy amount for the 2011 General Levy is \$1,329,253.

This represents a dollar increase of \$19,598 over the 2010 General Levy. The increase is made up of two components:

1) New Construction:	\$6,501
2) 1.00% increase over highest lawful levy:	<u>\$13,097</u>

Total Increase	<u><u>\$19,598</u></u>
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ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO FIXING THE
ESTIMATED AMOUNT TO BE RAISED BY AD VALOREM TAXES
AT \$1,329,253 FOR THE 2011 BUDGET OF THE CITY.**

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS
FOLLOWS:

SECTION 1. The estimated dollar amount to be raised upon real and personal property in Cowlitz County, Washington, to raise said dollar amount to cover the estimated budget needs of the City of Kelso for calendar year 2011 are as follows:

DOLLAR AMOUNT

General Levy \$1,329,253 or maximum allowed by law

SECTION 2. This Ordinance shall be in full force and effect five (5) days from and after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2010.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

AGENDA ITEM: Ordinance 1st reading
Final Budget 2011/2012.

AGENDA ITEM # _____
FOR AGENDA OF: 12/7/2010
ORIGINATING DEPT: Finance
DATE SUBMITTED: 12/2/2010
COST OF ITEM: _____
AMT. BUDGETED _____
CITY ATTY. APPROVAL _____
CITY MGR. APPROVAL _____

SUBMITTED BY: Brian Butterfield

AGENDA ITEM PAPERWORK:

See attached Ordinance.

SUMMARY STATEMENT/DEPT. RECOMMENDATION:

Ordinance adopts the 2011/2012 final biennial budget for the City of Kelso.
Total appropriations amount to \$34,907,763 and \$26,499,576 in 2011 and 2012, respectively.
Appropriations in the general fund amount to \$7,127,622 in 2011 and \$7,146,752 in 2012.

NOTE: This budget assumes 4 lay-offs in KPD as well as a 20% reduction in payments to Cowlitz 2 Fire in 2011 & 2012.

ORDINANCE NO. _____

**AN ORDINANCE RELATING TO MUNICIPAL FINANCE AND
ADOPTING A BUDGET FOR THE CITY OF KELSO FOR THE 2011/12
FISCAL YEARS.**

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That the City budget for the ensuing biennium of 2011/2012, as the same now appears in the Office of the City Clerk, be and the same is hereby in all respects adopted and approved.

SECTION 2. That the following are the separate totals of the appropriation total allowed for each of the following classes:

<u>FUND</u>	<u>2011 Budget</u>	<u>2012 Budget</u>
General	\$7,127,622	\$7,146,752
Street	554,955	577,223
Arterial Street	2,415,728	2,431,878
Library	395,882	405,742
Paths & Trails	33,000	-
Kelso Station	59,900	92,100
Stadium	176,850	178,750
Hilander Festival	64,100	64,100
Parks and Recreation	226,670	225,907
Tam O'Shanter Park	-	-
HUD Grant	691,572	626,572
Façade/Mural	-	-
Criminal Justice	437,382	331,671
2003 G.O. Bond	223,880	225,525
Capital Projects	30,000	35,000
Solid Waste	1,252,791	1,288,669
Water/Sewer	12,826,482	7,448,549
Water Capital Reserve	6,129,350	750,650
Drainage	723,781	818,261
Sewer Capital Reserve	480,600	2,299,600
Water Guarantee Deposit	90,000	90,000
Revenue Bond Fund	-	-
Bond Reserve Fund	-	-

Airport	739,986	1,182,884
Equipment Reserve	-	40,000
Firemen's Pension	<u>227,232</u>	<u>239,743</u>

TOTAL APPROPRIATIONS	<u>\$34,907,763</u>	<u>\$26,499,576</u>
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SECTION 3. That the City Clerk be and is hereby authorized and directed to transmit a copy of the budget as adopted to the Division of Municipal Corporations.

SECTION 4. This Ordinance shall be in full force and effect on the first day of January, 2011.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2010.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Ordinance, 1st Reading – Amending Ordinance No.
10-3731, Amending KMC 13.04.140, regarding the
City's Latecomer Agreement

Agenda Item: _____

Dept. of Origin: Engineering Department

For Agenda of: December 7, 2010

Cost of Item: _____

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

City Manager: Dennis Richards

AGENDA ITEM ATTACHMENTS:

Proposed Ordinance

SUMMARY STATEMENT:

As a house keeping measure, staff is bringing the Latecomer's Agreement forward. This provision was originally intended to apply to all infrastructures, but the current language limits it to only the water system. Adopting the attached ordinance allows the Latecomer's Agreement to apply to all infrastructure development.

RECOMMENDED ACTION:

Staff recommends council make a motion to approve the proposed ordinance, amending KMC 13.04.140, on 1st reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING ORDINANCE NO. 10-3731, AMENDING KMC 13.04.140, REGARDING THE CITY'S LATECOMER AGREEMENT, AS MORE PARTICULARLY DESCRIBED HEREIN.

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That KMC 13.04.140, entitled "Latecomer Agreements," is hereby amended to provide as follows:

13.04.140 Latecomer Agreements.

A. **Purpose and Term.** Any property owner utilizing private funds to install public ~~water-system-~~ infrastructure improvements may apply to the city to establish a latecomer agreement for recovery of a prorated share of the cost of constructing the public improvement from other properties that will later derive a benefit from the improvements. No latecomers' agreement shall extend for a period longer than 15 years from the date of final acceptance by the city unless a longer period is allowed pursuant to RCW 35.91.020.

B. **Rights and nonliability of city.** The city reserves the right to refuse to enter into any latecomer agreement or to reject any application therefore. All applications for latecomers' agreements shall be made on the basis that the applicant releases and waives any claims for any liability of the city in establishment and enforcement of latecomer agreements. The city shall not be responsible for locating any beneficiary or survivor entitled to benefits by or through latecomer agreements.

C. **Application requirements.** All applications for latecomer agreements shall be on forms established by the public works director and approved as to form by the city attorney. The application shall contain the following information:

1. Legal description of the property and of each of the benefited properties.
2. Vicinity maps showing the property, the benefited properties and the location of the proposed improvement.
3. Estimated cost data.
4. Proposed pro rata share of the cost of the improvement to be borne by the benefiting properties and the proposed method of assessment of the pro rata share.
5. Payment of application fee.

D. **Eligibility of applicants.** In order to be eligible for processing of latecomer agreements, applicants for latecomer agreements shall be in compliance with all city ordinances, rules, and regulations.

E. Procedures for reimbursement agreements.

1. If a reimbursement agreement is requested, the property owner shall submit project plans and a site plan, map or diagram of the proposed benefited area prepared by a licensed professional engineer, ownership reports on properties within the proposed benefited areas, a cost estimate for the project based upon the plans of a civil engineer from which reimbursable costs shall be estimated, and such other information as the city may require.
2. Property owners requesting a reimbursement agreement shall submit, along with the application, a nonrefundable payment in the amount established in the current rate ordinance as adopted or hereafter amended to be applied to the city's legal, engineering and administrative costs (including but not limited to staff time, and costs for title reports, appraisers, or other costs) associated with preparing the reimbursement agreement, which costs shall be included as reimbursable costs in the reimbursement agreement; provided, that whenever city engineering, legal, and administrative costs exceed the payment required herein, the city shall not process the application or execute any agreement until such costs have been paid in full.
3. The public works director, based on information submitted by the property owner will formulate an assessment reimbursement area (benefit area) based upon a determination of which parcels did not contribute to the original cost of such infrastructure improvement and which connect to or specially benefit from such infrastructure.
4. The public works director based on information submitted by the owner will estimate pro rata share of costs. The public works director may require engineering costs or construction bids to be provided and may retain an appraiser to assist in formulating the benefit area and pro rata costs.
5. The public works director shall make a preliminary determination of the benefit area and assessments and shall notify the property owners within the proposed benefit area by first class mail of the benefit area, the approximate assessment, and a description of the property owners' rights and options to participate in the agreement. The property owners may, upon payment of an appeal fee established in the Current Rate ordinance as adopted or hereafter amended, appeal the preliminary determination to the City Council within twenty (20) days of the date of mailing. The City Council may delegate the hearing examiner to hold the public hearing, establish the record and make a recommendation to the City Council.
6. Upon completion of the preliminary determination, and appeal there from, if any, the City shall prepare the final latecomers agreement for public hearing and consideration by council and shall notify the property owners within the proposed benefit area by first class mail of the hearing date.
7. Upon approval by City Council, the latecomer agreements must be recorded in the County auditor's office within 30 days of the final execution of the agreement. It shall be the sole responsibility of the latecomer applicant to record said agreement. Once recorded, the latecomer agreement shall be binding on owners of record within the assessment area who are not party to the agreement.

F. **Construction.** After the Latecomers' Agreement has been signed by both parties and all necessary permits and approvals have been obtained, the applicant shall construct the system improvements and upon completion obtain final inspection and acceptance of the improvement by the city.

G. **Illegal connection.** No person or entity shall be granted a permit or be authorized to connect to the water system improvements during the time set forth in the recorded latecomer agreement without first paying to the city, in addition to any and all other costs and charges assessed for such connection, the amount required by the latecomer agreement. Whenever any connection is made without such payment having first been made, the city may remove, or cause to be removed such unauthorized connection and all connecting pipe located in the right of way and dispose of the unauthorized material without any liability.

H. **City Ownership.** All water system improvements constructed by the property owner and to be subject to the latecomer agreement must be dedicated to and owned by the City.

SECTION 2. This Ordinance shall be in full force and effect five (5) days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2010.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Resolution – Assignment and transfer to Beacon Hill Sewer District of Water Wheeling Agreement and Interlocal Agreement for Interim Water Purchase

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: December 7, 2010

Cost of Item: _____

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

City Manager: Dennis Richards

AGENDA ITEM ATTACHMENTS:

Proposed Resolution
Executive Summary of Assignment/Delegation – Paul Brachvogel, General Council Cowlitz PUD

SUMMARY STATEMENT:

The PUD is in the process of transferring their water system to Beacon Hill Water and Sewer District (BHSD). They are requesting that Kelso's existing agreements be transferred to BHSD (see attached Executive Summary). Staff supports the transfers contingent on the execution of the new BHSD Water Wheeling Agreement to be considered December 7, 2010.

RECOMMENDED ACTION:

Staff recommends council make a motion to approve the proposed Resolution authorizing assignment and transfer to Beacon Hill Sewer District of Water Wheeling Agreement and Interlocal Agreement for Interim Water Purchase, contingent to the execution of the new BHSD Water Wheeling Agreement.

Memorandum

To: Denny Richards, Kelso City Manager; and to
The Kelso City Council

From: Paul Brachvogel, General Counsel Cowlitz PUD

Date: November 22, 2010

Re: EXECUTIVE SUMMARY OF ASSIGNMENT / DELEGATION

You will recall the District entered into an Interlocal Agreement with the Beacon Hill Sewer District (BHSD) delegating duties of Operation and Maintenance (O&M) to be performed by BHSD for a three (3) year period. That agreement also expressed the parties' intention to convey the entire water system after that period.

During the three year period of O&M performed by BHSD, the BHSD has demonstrated considerable efficiencies not realized during the District's operation of the system; and, which will continue to greatly benefit the rate payers of the water system. This is both owing to the physical proximity of the water and sewer systems, and the expertise of the management of the BHSD. Following considerable due diligence during the preceding three (3) years of BHSD's O&M, it is the intention of both Boards to convey the water system to the BHSD, with final closing of the transaction on December 28, 2010 during the District's regular Board of Commissioners meeting.

The District has certain contracts with the City of Kelso, to wit: Water Wheeling Agreement, the Interlocal Agreement and the Water Service Areas Agreement to BHSD. Prior to the conveyance of the water system to BHSD, the City must consent to the assignment of rights duties under those agreements.

Therefore, based on the foregoing, it is the request of the BHSD and the District that the City Council for the City of Kelso pass the attached Resolution authorizing consent to the assignment of rights contained therein; and, to the extent empowered under those agreements, authorize the water system transfer to the BHSD.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KELSO, COWLITZ COUNTY, WASHINGTON CONSENTING TO THE ASSIGNMENT AND TRANSFER TO BEACON HILL SEWER DISTRICT OF WATER WHEELING AGREEMENT AND INTERLOCAL AGREEMENT FOR INTERIM WATER PURCHASE.

WHEREAS, Public Utility District No. 1 of Cowlitz County, Washington ("Cowlitz PUD") currently provides water service to areas adjacent to the City of Kelso, Washington (the "City"), through a water system operated Cowlitz PUD (the "Water System") pursuant to (i) a Water Wheeling Agreement, dated May 15, 1978, between Cowlitz PUD and the City, as amended by Amendment No. 1 to Water Wheeling Agreement, dated as of August 2, 1978, and by Appendix C – Revision I, dated as of March 20, 1979 (collectively, the "Water Wheeling Agreement"), (ii) an Interlocal Agreement for Interim Water Supply, dated as of March 12, 2001 (the "Interlocal Agreement"), by and between the City, the City of Longview, Washington ("Longview") and Cowlitz PUD and (iii) that certain Water Service Areas Agreement, by and between the City, Longview and Cowlitz PUD entered into as of July 1976 (the "Water Service Areas Agreement"); and

WHEREAS, pursuant to the terms of an Interlocal Agreement, dated as of November 20, 2007, between Cowlitz PUD and the Beacon Hill Sewer District, a municipal corporation ("BHSD"), as amended by the Amendment to Interlocal Agreement, dated as of August 11, 2010, between Cowlitz PUD and BHSD (collectively, the "BHSD Interlocal Agreement"), BHSD has been operating the Water System; and

WHEREAS, Cowlitz PUD now desires to sell and transfer the Water System to BHSD, together with certain related real property, personal property and intangible property (collectively, the "Transfer"); and

WHEREAS, in connection with such Transfer, Cowlitz PUD has requested that the City consent to the assignment of the Water Wheeling Agreement, the Interlocal Agreement and the Water Service Areas Agreement to BHSD; and

WHEREAS, the City Council of Kelso hereby finds that it is advisable and in the best interests of the City to consent to such assignments;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON as follows:

Section 1. Assignment of Agreements to BHSD. The City hereby consents to the assignment and transfer of the Water Wheeling Agreement, the Interlocal Agreement and the Water Service Areas Agreement (collectively, the "Agreements") to BHSD in connection with the Transfer and acknowledges and confirms that from and after the effective date of the Transfer, references to Cowlitz PUD in the Agreements shall be deemed to be references to BHSD. The City hereby further acknowledges and agrees that, notwithstanding any provisions of the Agreements to the contrary, all terms and conditions of the Agreements will thereafter

remain in full force and effect notwithstanding such Transfer. From and after the effective date of the assignment and transfer of the Agreements, the City shall look solely to BHSD for performance of all obligations thereunder and Cowlitz PUD shall be released from all liability with respect to matters first arising from and after the date of such assignment.

Section 2. Water Wheeling Agreement. The City finds and confirms that the provisions of Article VII of the Water Wheeling Agreement, which provide for automatic termination of portions of the Water Wheeling Agreement in the event of a change in ownership, relate to annexation of property by the City that result in the City taking over portions of the Water System operated by Cowlitz PUD, and do not have any force or effect with respect to the Transfer of the Water System, as a whole, from Cowlitz PUD to BHSD. The City specifically acknowledges and agrees that the provisions of Article VII are not triggered by the Transfer of the Water System to BHSD and, notwithstanding anything to the contrary set forth within said Article VII, the Appendix (as defined in the Water Wheeling Agreement) remains in full force and effect following such Transfer.

Section 3. Further Action; Ratification of Prior Actions. The officers, agents and employees of the City shall be and each of them is hereby authorized, empowered and directed to execute and deliver such documents, amendments, certificates and agreements and to take such other actions as they deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the Agreements described herein, including, without limitation, the execution and delivery of any supplements or amendments to any of the Agreements.

Section 4. Effectiveness. This Resolution shall take effect from and after its adoption.

ADOPTED by the CITY COUNCIL and signed by the MAYOR this ____ day of December, 2010.

Mayor

ATTEST/AUTHENTICATION:

City Clerk

APPROVED AS TO FORM:

City Attorney